

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA	*	CRIMINAL DOCKET NO. 07-274
v.	*	SECTION: "J" (3)
JOHN WAYNE THOMAS	*	VIOLATIONS: 18 U.S.C. § 922(g)(1)
		18 U.S.C. § 924(a)(2)
	*	18 U.S.C. § 924(c)(1)
		21 U.S.C. § 841(a)(1)
	*	21 U.S.C. § 841(b)(1)(C)
		18 U.S.C. § 1708
*	*	*

FACTUAL BASIS

Should this matter have gone to trial, the Government would have proved through the introduction of competent testimony and admissible tangible exhibits, including documentary evidence, the following to support the allegations charged by the Government in Counts 1 through 3 of the superseding bill of information now pending against the defendant, **JOHN WAYNE THOMAS**, (hereinafter "THOMAS") to wit: possessing with the intent to distribute a detectable amount of Methadone, a Schedule II narcotic drug controlled substance, in violation of Title 21 United States Code, Sections 841(a)(1) and 841(b)(1)(C); having been convicted of a crime punishable for a term exceeding one year, knowingly possessing a firearm that had been shipped and transported in interstate or foreign commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2) and in furtherance of a drug trafficking crime, to wit,

possession with intent to distribute a detectable amount of Methadone, knowingly possessing a firearm, in violation of Title 18, United States Code, Sections 924(c)(1).

Evidence would be adduced at trial which would show that on April 4, 2007, New Orleans Police Department officers observed a hand to hand transaction between THOMAS and a third party, sitting in a car, for prescription pills containing Methadone wherein THOMAS transferred the Methadone to the third party. When THOMAS realized that the officers observed the transaction, THOMAS yelled a warning to the third party and fled into the lobby area of a motel located at 1924 St. Ann Street, New Orleans, Louisiana and located in the Eastern District of Louisiana. With officers in hot pursuit, THOMAS entered the lobby area and discarded from his person, a Hi-Point Firearm Model C9, 9 mm semi-automatic pistol, bearing serial number P1285399, to the ground. NOPD officers retrieved several broken Methadone wafers from the third person who received them and from THOMAS, \$1,516.00 in U.S. currency, several Alprazolam (Xanax) tablets and the Hi-Point pistol. A chemist would testify that the drug evidence described above as Methadone, is a Schedule II narcotic drug controlled substance.

A drug trafficking narcotics expert would testify that based on the quantity of drugs, the packaging and types of drugs recovered, the amounts and types of cash recovered, and the type of weapon found that the Methadone and Alprazolam (Xanax) possessed by THOMAS were consistent with distribution of the drugs not personal use. The expert would further testify that weapons such as the firearm described herein are possessed in furtherance of drug trafficking and also used to protect the narcotics trafficker, his drugs and the money that he carries. The firearm furthered and advanced THOMAS's drug trafficking.

A Deputy Clerk of Court would testify that THOMAS had entered a plea of guilty and was convicted on or about October 17, 2000, in the Twenty-second Judicial District Court for the Parish of Washington in criminal case 99CR5 77464, for possession of Alprazolam, a Schedule IV controlled substance in violation of La. R.S. 40:969(C), with five years probation and that on January 18, 2003, THOMAS's probation was revoked and THOMAS was sentenced to three years with the Louisiana Department of Corrections.

A state corrections officer would testify that THOMAS, after the aforesaid conviction and prior to April 4, 2007, was advised that he could not own, possess or receive any firearm and that THOMAS had not applied for or received a pardon.

A fingerprint expert would testify that he examined the fingerprints taken of the defendant convicted of the aforesaid felony and positively matched them with the fingerprints of THOMAS, the defendant indicted herein.

ATF agents would testify that the aforesaid Hi-Point Firearm Model C9, 9 mm semi-automatic pistol, bearing serial number P1285399 was manufactured for Hi-Point firearms by Beemiller, Inc., in Mansfield, Ohio, before being sold in commerce. Furthermore, that the aforesaid firearm was not manufactured in the State of Louisiana and thus, traveled in interstate commerce to reach the State of Louisiana prior to THOMAS's possession of the firearm.

An ATF agent would testify that the aforesaid firearm, is a weapon designed to expel a projectile by the action of an explosive, and thus meets the definition of a firearm as defined by Title 18, United States Code, Section 921(a)(3).

As to Count 4, the government would prove through competent witnesses and documentary evidence that on or about March 16, 2007, in Kenner, Louisiana, THOMAS unlawfully possessed a check which had been stolen from the United States mail. The check, number 4522, was drawn on the account of Caballero Pest Control, LLC, held at Whitney National Bank. Originally, the check was made payable to "Cox" in the amount of \$155. The owner of Caballero Pest Control had placed it in his mailbox to be picked up by a letter carrier. The check was subsequently stolen from the mail and forged to read payable to "Cash" in the amount of \$4,055.

THOMAS attempted to cash the stolen check at Wagner's Meat Market in Kenner, Louisiana. The clerk at Wagner's suspected that the check was altered and sought to verify its legitimacy with Caballero Pest Control. Meanwhile, THOMAS left the store leaving the check and his Louisiana identification card behind with the clerk.

After being advised of his constitutional rights THOMAS agreed to be interviewed by United States Postal Inspectors. THOMAS admitted the foregoing facts to the Inspectors,

including that the check was stolen from the mail, he knew the check was stolen, and he intended to possess the check unlawfully.

TONY GORDON SANDERS Assistant United States Attorney Louisiana Bar Roll No. 11705	Date
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IRENE GONZALEZ Assistant United States Attorney Louisiana Bar Roll Number 18915	Date
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GARY V. SCHWABE, JR. Counsel for Defendant Louisiana Bar Roll No. _____	Date
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JOHN WAYNE THOMAS Defendant	Date
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